

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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| ANTONIO PEARSON, | : |
| Plaintiff | : |
| v. | :Case No. 3:09-cv-97-KRG-KAP |
| PRISON HEALTH SERVICE, <u>et al.</u> , | : |
| Defendants | : |

MEMORANDUM ORDER

This matter was referred to Magistrate Judge Keith A. Pesto for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and subsections 3 and 4 of Local Rule 72.1 for Magistrate Judges.

The Magistrate Judge filed a Report and Recommendation on August 18, 2011, docket no. 63, recommending that summary judgment be granted to the remaining defendants for lack of prosecution and additionally granted on the merits as to defendant McGrath. On August 3, 2011, the Magistrate Judge had denied plaintiff's motion for extension of time to respond to the motion for summary judgment that was based on an alleged failure by defendant McGrath to answer a discovery request, ordering plaintiff to "immediately" file a motion specifying what material had been requested but not produced. docket no. 61 The Magistrate Judge also observed that plaintiff had never complied with an order entered in January, docket no. 36, directing plaintiff to provide directions for service on three other defendants, and also ordered plaintiff to "immediately" correct that.

Plaintiff did not respond to the Magistrate Judge's order. After the Magistrate Judge recommended dismissal for failure to prosecute and the parties were notified pursuant to 28 U.S.C. § 636(b)(1) that they had fourteen days to file written objections to the Report and Recommendation, plaintiff sent (without explanation) to the Clerk service copies of his complaint dated January 2011 and service of process forms dated August 20, 2011. docket no. 65. That is eight months late and almost three weeks after an order to provide them "immediately." See docket no. 61, docket no. 36.

As for the Report and Recommendation recommending grant of the motion filed by defendant McGrath on the merits, plaintiff filed timely objections that, to the extent they address the Report and Recommendation, reiterate the allegations in the amended complaint. docket no. 66. At the summary judgment stage, plaintiff is required to produce, or at least point to, evidence admissible at trial showing that there is a genuine issue of fact that defendant McGrath's state of mind in providing Pearson with medical care was deliberately indifferent. Plaintiff has produced nothing to refute defendant McGrath's evidence.

Upon de novo review of the record of this matter, the Report and Recommendation, and the timely objections thereto, the following order is entered:

AND NOW, this 16th day of September, 2011, it is

ORDERED that summary judgment is granted to the remaining defendants. The Report and Recommendation is adopted as the opinion of the Court. The Clerk shall mark this matter closed.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kim R. Gibson", written over a horizontal line.

KIM R. GIBSON,
UNITED STATES DISTRICT JUDGE

Notice to counsel of record by ECF and by U.S. Mail to:

Antonio Pearson BL-0521
S.C.I. Coal Township
1 Kelley Drive
Coal Township, PA 17866-1021